IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 399 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MOHAMMEDSIDDIQUE A BAQUI

Appearance:

1. Criminal Appeal No. 399 of 1989

MR. S.S. PATEL, LD. APP for Appellant No.

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 18/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The Appellant - State of Gujarat has filed this appeal and challenged the order of acquittal recorded by learned Addl. City Sessions Judge, Court No.9, Ahmedabad, passed in Sessions Case no. 263 of 1988 on 2-3-1989 acquitting the respondent accused from offence under section 21 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as the 'Act') as will as offence under section 66 (1) (b) of the Bombay Prohibition Act. The present appeal was admitted as per order dated 22-9-1989 and the Court has issued bailable warrant against respondent accused in sum of Rs.5000-00. This appeal was notified before us for final hearing.

2. We have heard Mr. S.S. Patel, learned APP for the appellant State and during hearing Mr. Patel has taken us through the evidence of the witnesses recorded during trial as well as the documentary evidence, namely panchnama carried out in presence of panchas at the residence of the accused where from the narcotic substance was seized, copy of the FIR, FSL report and the judgment under challenge. Mr. Patel while arguing the appeal has vehemently urged that in light of the evidence adduced by the prosecution, learned trial Judge was not right in acquitting the accused by not accepting the prosecution case and further that, learned trail Judge was also not right in holding that there is breach of mandatory provisions of the NDPS Act, that the muddamal substance was seized at the residence of the accused in presence of the panchas and the order of acquittal recorded by learned trial Judge has resulted into miscarriage of justice. He has next urged that, in view of the evidence of Mr. Bhati who was working as Superintendent of Police, 'D' Division Police Station, was one of the members of the raiding party and as found from his evidence that the brown sugar was seized from the residential premise of the accused in presence of panchas and the said muddamal brown sugar was produced by the accused and thereby the prosecution has established the case beyond reasonable doubt that the brown sugar was seized from the house of the accused, and further that, while seizing the said brown sugar all the requirements of law has been followed during the raid and the learned trail Judge has committed error in appreciating the evidence which has resulted into miscarriage of justice, and accordingly prayed that the order of acquittal recorded by learned trial Judge be set aside by allowing the appeal and the accused be convicted for the offence

for which he was charged.

3. It is the prosecution case that one Shri. Bhati, Superintendent of Police attached to 'D' Division Police Station was on duty of petrolling on 12-4-1988 along with his Reader PSI Shri. Chauhan during evening and he visited Maninagar police station, Amraiwadi police station and Vatva police station which are within his jurisdiction. During petrolling on that night at about 9.05 p.m. both the officers came near Ghodasar railway crossing and one person was apprehended on suspicion whose name was Bharat Rajaram and he was arrested. During search of that person 8 grams brown sugar was found from his possession. A complaint was filed against the said Bharat Rajaram at Vatva police station vide prohibition case No. C.R. No. 58/1988. After the arrest of said accused Bharat Rajaram he was interrogated who in turn gave information of his involvement in such cases in company of one Mohmadsiddiq Abdullatif Saqui who is dealing in brown sugar and the said accused Bharat Rajaram had shown his willingness to lead them to the house of said person, who is respondent accused in the present appeal. After getting the information from the said accused Bharat Rajaram, the police had drawn some preliminary panchnama to carry out the raid by calling panchas in the police station and the raiding party along with Bharat Rajaram and panchas had proceeded and reached at Kalupur police station. At Kalupur police station other officers from the said police station were taken as members of the raiding party and they all had gone to the house of the accused as shown by Bharat Rajaram. The house of the accused is situated in Panch Kadki pole in Kalupur locality and this was night time. On reaching nearby the house of the accused, Bharat Rajaram had pointed out the house of the respondent accused. Doors of the said house was open and police personnel called the name of the respondent accused and said person came out from the house, who in turn has disclosed the name as Mohmmed Siddique.

4. It is the prosecution case that, thereafter the raid was carried out at the first floor where the accused had taken raiding members of the party. It is the prosecution case that from the first floor in the second room the accused took out one plastic bag from wooden shelf. From the said plastic bag 9 polythene bags containing brown colour powder approximately weighing 5 grams each, in total 45 grams was found. Said powder was sealed in presence of panchas by drawing panchnama. Sample from the powder was also taken out and PSI Chavda effected arrest of the accused and Chavda had filed

complaint against the accused at Kalupur police station. The muddamal which was sized from the house of the accused in presence of panchas were handed over at Kalupur police station along with report of forwarding letter and the report was sent for registering offence against the accused and accordingly offence was registered at Kalupur police station being C.R. No: 109/1988. After the accused was brought with the muddamal in the police station by Mr. Chavda, PSI the investigation of the case was entrusted to Head Constable Mr. G.M. Rohit who in turn has recorded statement. He has also recorded statement of B.A. Kazi, PSI Rayjada, PSI of Kalupur police station, PSI R.N. Joshi of Maninagar police station and also statement of Bhati, S.P. attached to 'D' division police station. The accused was interrogated by investigating officer and was produced before the Magistrate in the evening and further investigation was handed over to Shri. R.L. Chavda, Police Inspector. After completion of the investigation and after receiving FSL report the police has filed chargesheet against the accused in the Court of Learned Chief Metropolitan Magistrate and the case of the accused was committed to the Sessions Court for trial. The charge was framed against the accused for offence under section 21 of the NDPS Act as well as for offence under section 66 (1) (b) of the Bombay prohibition Act and as the accused had not pleaded guilty to the charge the prosecution has led evidence by examining the witnesses including the panchas who were at the time acted as panchas and attached with the members of the raiding party.

5. The prosecution has examined complainant Shri. Chauhan who has filed complaint which is at exhibit-13, and has proved the complaint which was filed by him as he was also one of the members of the raiding party. Prosecution has also examined the officer who has taken muddamal article from Kalupur police station to the office of the FSL and also examined police Head Constable who had kept custody of the muddamal article till the muddamal was forwarded for examination before FSL. About the FSL report of chemical analyser Mr. A.N. Patel, Senior Scientific Assistant Cum Assistant Chemical Examiner also proved the report and the examination of the muddamal which was seized from the accused as well as work sheet for making examination of the muddamal in laboratory. Rameshbhai Kashinath who was the panch witness at the time when the raid was carried out at the house of the accused was also examined by the prosecution and other police officers who are attached with the investigation were also examined. As found from the

record the defence of the accused is that he his innocent he has not committed any offence and he does not know the plastic bag and 9 polythene plastic bags found from the said plastic bag which was found from his house at the time of raid on 12-4-1988 during night time and he was falsely involved on the ground that he was running pan shop near Kalupur police station and police personnel used to come to his shop to eat pan without paying charge.

6. In light of the contentions raised before us and on examining the order under challenge, learned trial Judge has discussed the evidence of the prosecution witnesses and also examined the provisions of the NDPS Act, and by appreciating the evidence and considering the provisions of the NDPS Act learned trial Judge has recorded the finding and held that the prosecution has failed to prove that 9 small polythene packets each weighing 5 grams, total 45 grams of brown sugar was found from the possession of the accused and further the learned trial Judge has also considered and discussed the evidence of panch witness and also considered the evidence of Shri. Bhati, Superintendent of Police and has in turn held that there is breach of mandatory provisions during the raid carried out at the house of the accused and further that, the raiding member of the party has also not followed mandatory requirements of law during the raid and the learned trial Judge has accordingly while acquitting the accused has given the benefit of doubt. Learned trial Judge has also recorded the findings while considering the evidence of panch witness examined by the prosecution and held that the panch examined by the prosecution cannot be considered to be an independent person as found from the evidence of the panch in which he has admitted that he acted as panch in many cases prior to acting as panch in the present case and he is also close to the police officers as he was working as tailor and he has stitched clothes of the police persons. Learned trial Judge has in turn recorded the finding that there is non compliance of section 41, 42, 55 and 57 of the NDPS Act and as there is non compliance of mandatory provisions of law, learned trial Judge while acquitting the accused has given benefit of doubt.

7. In light of the findings recorded by the learned trial Judge and considering the submissions of Mr. Patel and this being an acquittal appeal, even after reappreciating the evidence and when the learned trial Judge has recorded the finding by not accepting the prosecution case, it is not possible for this Court to

convert the order of acquittal into conviction in light of the catena of decisions of the Apex Court. In our view no error is committed by learned trial Judge as the learned trial Judge has recorded the order of acquittal by giving benefit of doubt after appreciating the evidence of the prosecution witnesses. Learned trial Judge has also in detail examined the evidence of PW-1 Shri. Patel, Chemical Analyzer in respect of the analysis of the substance which was found from the accused and the FSL report produced, by which learned trial Judge recorded the finding that even as found from the analysis report the muddamal article can not be said to be brown sugar in view of the admission made by Shri. Patel.

8. In our view the findings recorded by learned Trial Judge is based on appreciation of evidence as well as considering the legal provisions and when the learned trial Judge has given benefit of doubt, this is not a case in which the appeal is required to be entertained by reversing the findings recorded by learned Trial Judge and convict the respondent. The order of acquittal recorded by learned Trial Judge acquitting the respondent/original accused under section 21 of the NDPS Act as well as under section 66 (1) (b) of the Bombay Prohibition Act deserve to be confirmed. The appeal is accordingly dismissed. Bail bond furnished by the respondent / ori. accused stands cancelled.

Rest of the order passed by learned Trial Judge regarding disposal of muddamal etc. is hereby confirmed.

Dt: 18-12-2004. (D.K. TRIVEDI, J)

(S.R.BRAHMBHATT, J)

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